

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: [REDACTED]	Team: Squad #10	CCRB Case #: 202005820	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tue, 07/28/2020 1:48 AM	Location of Incident: City Hall Park at Park Row and Spruce Street	Precinct: 01	18 Mo. SOL 01/28/2022	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 08/21/2020 7:50 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Tue, 08/25/2020 11:27 AM		

Complainant/Victim	Type	Home Address
1. M [REDACTED] s S [REDACTED]	Reporting Non-Witness	[REDACTED]
2. N [REDACTED] E [REDACTED]	Victim	Refused
3. An individual	Victim	unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM R [REDACTED] A [REDACTED]	[REDACTED]	[REDACTED]	023 PCT
2. POM A [REDACTED] L [REDACTED]	[REDACTED]	[REDACTED]	023 PCT
3. POM S [REDACTED] H [REDACTED]	[REDACTED]	[REDACTED]	023 PCT
4. LT L [REDACTED] W [REDACTED]	00000	[REDACTED]	023 PCT
5. POM J [REDACTED] A [REDACTED]	[REDACTED]	[REDACTED]	023 PCT
6. POM Lallit Beharry	28207	[REDACTED]	023 PCT
7. POM S [REDACTED] E [REDACTED]	[REDACTED]	[REDACTED]	023 PCT

Officer(s)	Allegation	Investigator Recommendation
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
G . POM Lallit Beharry	Other: Police Officer Lallit Beharry improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	G . Other Misconduct
H [REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
[REDACTED]	[REDACTED]	[REDACTED]

Case Summary

On August 21, 2020, M [REDACTED] S [REDACTED], who did not witness this incident, filed this complaint on behalf of N [REDACTED] B [REDACTED] and an unknown male victim with IAB by email. It was received at the CCRB on August 25, 2020, under IAB log number 20-20269.

On July 28, 2020, at approximately 1:48 a.m., Ms. B [REDACTED] and a male victim (Ms. B [REDACTED] declined to provide a name or contact information for this person) were walking past City Hall Park at the intersection of Park Row and Spruce Street in Manhattan. Ms. B [REDACTED] and the male victim saw PO R [REDACTED] A [REDACTED], PO A [REDACTED] L [REDACTED], PO S [REDACTED] H [REDACTED] PO J [REDACTED] A [REDACTED], PO Lallit Beharry, PO S [REDACTED] E [REDACTED], and Lieutenant L [REDACTED] W [REDACTED], all of the 23rd Precinct, standing by the gate surrounding City Hall Park. When Ms. B [REDACTED] saw PO A [REDACTED] and four of the other officers smoking cigars, Ms. B [REDACTED] asked them if they were allowed to smoke while on duty. One of the officers told her that they were celebratory cigars for the recently passed city budget and for clearing out the encampment of protestors that had taken up residence in City Hall Park a few days prior. In response to this, Ms. B [REDACTED] told the officers, "Have a terrible night!" PO A [REDACTED] responded to Ms. B [REDACTED], "Suck my dick!"

[REDACTED] The male victim asked PO A [REDACTED] why he had said that to Ms. B [REDACTED] and, after speaking for a couple minutes, PO A [REDACTED] moved close to the male victim and yelled, "Come on this side!" while pointing to the ground on his side of a metal barricade separating the street and the sidewalk [REDACTED]

[REDACTED] PO L [REDACTED], PO Beharry, PO H [REDACTED], PO A [REDACTED], PO E [REDACTED] and Lieutenant W [REDACTED] approached PO A [REDACTED], Ms. B [REDACTED], and the male victim then walked away from the scene.

PO A [REDACTED], PO L [REDACTED], PO H [REDACTED], PO A [REDACTED], PO Beharry, PO E [REDACTED], and Lieutenant W [REDACTED] did not record the incident on their body-worn cameras (BR 16) [REDACTED]

Ms. B [REDACTED] took cell phone video of a portion of this incident (BR 01 and BR 02). There was no other video of the incident. No arrests or summonses resulted from this incident. This case was added to the sensitive case list due to substantial social media engagement on Twitter and Instagram (BR 17, BR 18, and BR 20).

Findings and Recommendations

It was disputed whether PO A [REDACTED] told Ms. B [REDACTED] "Suck my dick."

Ms. B [REDACTED] (BR 03) stated that on July 28, 2020, at approximately 1:48 a.m. she and the male victim were walking by City Hall Park at the intersection of Park Row and Spruce Street. As they passed, Ms. B [REDACTED], who was approximately 10 to 12 feet away, saw PO A [REDACTED] and three to four additional officers smoking cigars. Ms. B [REDACTED] and the male victim were on the street immediately next to a metal barricade separating the street from the sidewalk, and the officers were standing closer to the tall metal fence that surrounds the park itself. Ms. B [REDACTED] asked the officers if they were allowed to smoke while on duty, and one of the officers told her that they were celebratory cigars in honor of the recently passed city budget and for clearing out the encampment of protestors who had taken up residence in the park a few days prior. Ms. B [REDACTED], who was still at the metal barricade at the curb told the officers, "Have a terrible night!" and took a couple steps away when PO A [REDACTED] turned toward her, approached the metal barricade and said, "Suck my dick." After he said this, Ms. B [REDACTED] started to record the incident with her cell phone.

Ms. B [REDACTED] declined to provide a name or contact information for the male victim. As such, the investigation was unable to obtain a statement from him.

PO A [REDACTED] (BR 04) stated that he first noticed Ms. B [REDACTED] and the male victim when Ms. B [REDACTED], who was walking by the officers at the metal barricade separating the street from the sidewalk, yelled to the officers, "I hope you have a fucking horrible night!" Prior to that, none of the officers had spoken with or otherwise interacted with Ms. B [REDACTED] or the male victim. Ms. B [REDACTED] kept walking, and PO A [REDACTED] said in a normal tone of voice, "Wow! Okay." PO A [REDACTED] assumed that Ms. B [REDACTED] had heard him say this because she stopped walking, turned around, and approached the metal barricade in front of where he was standing. Ms. B [REDACTED] then accused PO A [REDACTED] of telling her,

"Suck my dick!" PO A [REDACTED] told Ms. B [REDACTED] that he had never said this, but Ms. B [REDACTED] and the male victim insisted that PO A [REDACTED] had told her, "Suck my dick!" PO A [REDACTED] denied ever saying, "Suck my dick!" at any point during the incident. PO A [REDACTED] asked the male victim repeatedly to explain what a "derogatory comment" was. When asked what the purpose of asking this was, PO A [REDACTED] said, "No purpose."

PO L [REDACTED] (BR 05), PO H [REDACTED] (BR 06), PO [REDACTED] (BR 07), PO E [REDACTED] (BR 08), PO Beharry (BR 09), and Lieutenant W [REDACTED] (BR 10) all provided generally consistent statements. PO L [REDACTED], PO H [REDACTED], PO A [REDACTED], and PO Beharry were all standing near PO A [REDACTED] by the fence surrounding City Hall park and heard Ms. B [REDACTED] say something like, "I hope you have a terrible night," after which Ms. B [REDACTED] and the male victim started to walk away. PO A [REDACTED] heard one of the officers say, "Oh. Okay," but did not know who, and PO L [REDACTED] noted that the officers were laughing amongst themselves at Ms. B [REDACTED]'s comment. None of these officers heard PO A [REDACTED] say, "Suck my dick." Almost immediately, Ms. B [REDACTED] and the male victim abruptly turned around and approached PO A [REDACTED] at the metal barricade. PO E [REDACTED] and Lieutenant W [REDACTED] were in a marked NYPD van across the street, and they were not in a position to hear the initial interaction. However, PO E [REDACTED] saw Ms. B [REDACTED] and the male victim walk past the officers, stop, and immediately turn to walk back toward them. Lieutenant W [REDACTED] was in the front passenger seat of the van on his phone and did not observe the initial interaction.

Later that night, PO A [REDACTED] told PO A [REDACTED] that he had been doing his job when Ms. B [REDACTED] and the male victim "started up" with him, but he did not explain why he had been upset. PO E [REDACTED] stated that approximately one to two months after the incident, PO A [REDACTED] approached him outside of the 23rd Precinct stationhouse and told him that he had an upcoming interview with the CCRB and wanted to explain the video that was circulating on social media. PO A [REDACTED] did not address the allegation that he said, "Suck my dick." However, he explained to PO E [REDACTED] his justification for telling the male victim, "Come on this side! (See **Allegation B**)," stating, "The dude didn't know what it was like from our side. He should come on this side of the barrier." PO A [REDACTED] did not speak with any of the other officers present after the incident.

Ms. B [REDACTED]'s cell phone video (BR 01 and BR 02) begins with PO A [REDACTED] lighting a cigar and the male victim, outside of the frame, says, "So watch your fucking mouth!" The camera pans left, and PO A [REDACTED] says, "What's a derogatory comment?" At 00:04 seconds, Ms. B [REDACTED], outside of the frame says, "You telling me to suck your dick." PO A [REDACTED] repeats, "What's a derogatory comment?" and Ms. B [REDACTED] says again, "You telling me to suck your dick." PO A [REDACTED], who is holding a cigar in his right hand, walks toward the male victim and says, "You know the English...go ahead, go ahead, go! What's a derogatory comment?" The male victim responds, "What she just said. You heard her."

In this case, it was undisputed that Ms. B [REDACTED] told PO A [REDACTED] to have a terrible night and began to walk away, that he responded to her, and that she and the male victim abruptly turned around and accused PO A [REDACTED] of saying, "Suck my dick" to Ms. B [REDACTED]. PO A [REDACTED] denied that he made this statement and instead only replied, "Wow, ok." None of the other officers interviewed heard PO A [REDACTED] say, "Suck my dick" to Ms. B [REDACTED], but only PO A [REDACTED] stated he heard an officer say "Oh ok." Furthermore, as PO A [REDACTED] spoke to PO A [REDACTED] later on the night of the incident, it was possible that this later conversation affected his recollection of the incident. PO A [REDACTED]'s statement was further called into question given his implausible and self-serving explanation of the threat of force [REDACTED] and PO E [REDACTED]'s account that PO A [REDACTED] tried to explain his behavior months later prior to their CCRB interviews. Given these factors, the investigation discredited PO A [REDACTED]'s statement with regard to [REDACTED].

By contrast, Ms. B [REDACTED]'s account of the incident was consistent with the video and consistent with that of the officers (minus the allegation). Ms. B [REDACTED]'s account was also free of exaggeration or obvious attempts at deception. She did not minimize her own actions in the incident and acknowledged her negative comment toward the officers. Furthermore, while Ms. B [REDACTED] and the male victim cannot be considered independent witnesses, the video and PO A [REDACTED] corroborated that they both contemporaneously complained that PO A [REDACTED] said "Suck my dick" to Ms. B [REDACTED]. The officers also corroborated Ms. B [REDACTED]'s account that she and the male victim confronted PO A [REDACTED] immediately after the alleged comment without a pause to confer amongst themselves first. Given these

factors, the investigation credited Ms. B [REDACTED]'s statement and determined that PO A [REDACTED] said, "Suck my dick" to her.

Per Patrol Guide Procedure 200-02 (BR 11), officers must treat all civilians with compassion, courtesy, and professionalism. Officers are expected to maintain a higher standard of integrity than is generally expected of others

[REDACTED]

[REDACTED]

[REDACTED]

It was undisputed that PO A [REDACTED] moved close to the male victim and yelled, "Come on this side!" while gesturing with his hand that the male cross over the metal barricade separating them.

Ms. B [REDACTED] (BR 03) stated that after PO A [REDACTED] told her, "Suck my dick!", the male victim asked PO A [REDACTED], who had his back to them, why he had said that to Ms. B [REDACTED]. PO A [REDACTED] turned toward them, approached the metal barricade, yelled loudly at the male victim, and told him to come over onto PO A [REDACTED]'s side of the metal barricade. PO A [REDACTED] increased his volume while he repeated for the male victim to come onto the other side of the barricade and pointed to the ground on his side of the barricade with his hand. The male victim remained where he was standing and did not move, while PO A [REDACTED] leaned closer so that they were face-to-face with only inches between them. When the male did not go onto the other side of the barricade, PO A [REDACTED] walked back toward the large fence around City Hall Park while other officers tried to calm him down by walking around him. Ms. B [REDACTED] did not want the situation to escalate further because she was afraid that PO A [REDACTED] would physically harm them, so she and the male victim walked away from the area.

As noted above, the investigation was unable to establish contact with the male victim.

Ms. B [REDACTED] filmed a portion of this incident on her cell phone (BR 01 and BR 02). The video begins with the male victim and PO A [REDACTED] arguing about the definition of "derogatory." Beginning at 00:09 seconds, PO A [REDACTED] walks toward the male victim and Ms. B [REDACTED], who are standing behind a metal barricade separating the street from the sidewalk. At 00:17 seconds, Ms. B [REDACTED] asks PO A [REDACTED], "Why are you stepping into his face?" PO A [REDACTED] responds, "I'm not. I'm behind the barrier." At 00:33 seconds, the male victim says to PO A [REDACTED], "They [police] have these jobs because they make the IQ low for your dumbass to get it. If the IQ was high enough, you couldn't get the job, you fucking dumbass." Beginning at 00:42 seconds, PO A [REDACTED] responds, "So you can?" and points to the ground with his right hand. PO A [REDACTED] walks closer to the male victim so that they are less than a foot apart, leans his head down towards the male victim's face and yells, "So come on this side! Come on this side! Come on this side! Huh! Huh! Huh!" PO A [REDACTED] then turns around toward the other officers who are immediately surrounding him. The right side of PO A [REDACTED]'s torso is not captured in the frame, and it is not clear if any officers physically pull PO A [REDACTED] away from Ms. B [REDACTED] and the male victim.

PO A [REDACTED] (BR 04) stated that after he said, "Wow, okay," Ms. B [REDACTED] and the male victim walked back up to the metal barricade, and the male started calling him names like, "officer dipshit," and, "dumbass," and accused him of making derogatory statements. PO A [REDACTED] and the male victim spoke for a few seconds, and then PO A [REDACTED] moved closer to the male victim's face, pointed to the ground with his hand, and repeatedly told him, "Come on the side." PO A [REDACTED] then turned around, and Ms. B [REDACTED] and the male walked away. PO A [REDACTED] did not recall any other officers intervening.

PO A [REDACTED] could not recall why he moved closer to the male victim when he repeated "Come on this side," and could not recall if he was yelling. PO A [REDACTED] explained that when he said, "Come on this side," and pointed to the ground with his hand, he had meant, "Come on this side of the law and help out your community." When asked if he ever explained this to the male victim, PO A [REDACTED] said that he had not. When asked why he had told the male victim, "Come on this side!", PO A [REDACTED] said that he had been angry and that, "We were a little heated [because of the verbal exchange]. It was a long night. They seemed angry as well." PO A [REDACTED] added that it was not his intent to physically fight with the male individual.

It was undisputed that PO A [REDACTED], PO L [REDACTED], PO H [REDACTED], PO A [REDACTED], PO Beharry, PO E [REDACTED] and Lieutenant W [REDACTED] did not engage their body-worn cameras at any time during this incident (BR 16) and that PO A [REDACTED] was yelling at the male victim. At the time of the incident, PO A [REDACTED], PO L [REDACTED], PO H [REDACTED], PO A [REDACTED], PO Beharry, PO E [REDACTED] and Lieutenant W [REDACTED] had all been assigned body-worn cameras in excess of 90 days.

Patrol Guide procedure 212-123 (**BR 13**) states that officers must activate their body-worn cameras prior to engaging in, or assisting another uniformed member of the service, public interaction that escalate and become adversarial.

Civilian and Officer CCRB Histories

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Mediation, Civil and Criminal Histories

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

Squad No.: 10

Investigator: [REDACTED] [REDACTED] 12/28/2020
Signature Print Title & Name Date

Squad Leader: [REDACTED] [REDACTED] 5/18/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date